

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND REVISION NO. 50 OF 2021**

**(Originating from Kinondoni District Land and Housing Tribunal,  
Misc. Application No. 784 of 2021x)**

**JOSEPH MKIRAMWENI.....APPLICANT**

**VERSUS**

**ACHING SARUNGI.....RESPONDENT**

**RULING**

*Date of Last Order: 28. 03.2022*

*Date of Judgment: 21.04.2022*

**MWENEGOHA, J**

At the District Land and Housing Tribunal for Ilala, the respondent, Aching Sarungu, applied for an execution of the orders given in Misc. Application No. 495 of 2020. The execution case was registered as Misc. Application No. 784 of 2021. He was granted as prayed.

The applicant is unhappy with the decision of the tribunal to allow the execution as prayed. He therefore filed the instant application under 43 (1) (a), (b) and 2 of the Land Disputes Courts Act, Cap 216, R.E 2019. He accompanied his application with an affidavit sworn by himself. He wants the court to call for and examine the records of the District Land and Housing Tribunal for Kinondoni District in respect of Execution No. 784 of 2021 to satisfy itself as to the correctness, legality or propriety of the Ruling entered in that application.

However, the respondent gave a notice of preliminary objection against the determination of the application at hand for a reason that, the application is misconceived, bad in law and is an abuse of court process.

The objection was disposed by way of written submissions, Advocate Karilo Mulembe appeared for the respondent while the applicant enjoyed the legal services of Advocate Godfrey Martin Silago.

In his submissions, Mr. Mulembe was of the view that, the applicant was supposed to file an application for stay of execution instead of the application for revision as he did. That, the application at hand is nothing but a delay tactic on part of the applicant. Therefore, the same should be dismissed.

In reply, Mr. Silago was of the view that, there is no procedure which the applicant has defaulted in bringing the application at hand. That the applicant preferred this application because the impugned order of Kinondoni, giving rise to the case at hand is not appealable.

I have given the submissions of parties the consideration they deserve. The issue for determination is whether the objection has merit or not. The golden rules for consideration while determining any preliminary objection are in the case of **Mukisa Biscuits Manufacturing Co. Ltd. Vs West End Distributors Ltd. (1969) EA**. It was emphasized in this case that, for a matter to be an objection, the same should be exclusively on the point of law. And a point of law as settled should be visible on the face of record. It should not be the one that the court cannot discover unless by first inviting the parties to present their arguments or evidence, see **Lyamuya Construction Company Ltd versus Board of Registered**

**Trustees of Young Women Christians Association of Tanzania,  
Civil Appeal No. 2 of 2010 (Unreported).**

In this case, the respondent's claim is to the effect that, the instant case ought not have been filed, instead the applicant could have filed a stay of execution. In my humble view, this objection falls short of the qualities laid down in *Mukisa Biscuits, (supra)*. It is not obvious if a point of law, rather the same is purely based on factual issues, see **Mechmar Corporation (Malyasia) Behard (Liquidation) Vs VIP Engineering and Marketing Limited and 3 Others, Civil Application No. 190 of 2013 (unreported)**. The respondent has failed to identify as to which law or any provision of the law, the applicant contravened by filling the instant application.

In the end, the objection overruled accordingly with costs. The main application shall proceed into hearing until its final determination.



  
T.N. Mwenegoha.

Judge

21/04/2022